Supreme Court, U.S.
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No. 97-43

In The

Supreme Court of the United States

October Term, 1996

ST. CHARLES COUNTY, MISSOURI,

Petitioner,

vs.

MISSOURI FAMILY HEALTH COUNCIL,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LORI J. LEVINE
CARSON & COIL, P.C.
515 East High, P.O. Box 28
Jefferson City, MO 65102
573-636-2177
Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

1. Do the federal courts have jurisdiction over an action which seeks to force the consideration of an application for Title X funds under 42 U.S.C. § 300 when the applicant requires parental consent for the provision of services to minors where state law requires consent for those particular services?

2. Did the District Court properly dismiss the complaint because the application for Title X funds violated the provisions of Title X by requiring parental consent for invasive procedures or provision of prescription medication for adolescents?

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STATEMENT OF THE CASE

Petitioner is a first class charter county, and Respondent is a not-for-profit corporation which administers grants for family planning services from the Health and Human Services Department pursuant to 42 U.S.C. § 300. Petitioner St. Charles County operates two health clinics using Title X funds offering family planning services including prescription medications and intrusive medical procedures. St. Charles County had been a recipient of Title X funds administered by Missouri Family Health Council prior to April 1995 when they filed the application in question which included a new policy on informed consent requiring consent from parents of minors as a precondition to receipt of prescription medication or intrusive procedures. The Missouri Family Health Council refused to consider St. Charles County's application based upon the County's adoption of the policy of parental consent. Nowhere in the complaint or attachments thereto is there any suggestion that the County was applying as a provider of single method family planning. The Missouri Family Health Council does not dispute that § 431.061 R.S.Mo. requires parental consent for certain medical procedures such as provision of prescription medication or intrusive procedures. The County's complaint, in addition to seeking a declaration as to the interpretation of § 431.061, R.S.Mo., asks the court to declare that Missouri Family Health Council could not use the parental consent rule adopted by the county as a reason for denying their application for federal funds.

REASONS FOR DENYING THE WRIT

I. THE FEDERAL COURTS HAVE JURISDICTION OVER AN ACTION WHICH SEEKS TO FORCE THE CONSIDERATION OF AN APPLICATION FOR TITLE X FUNDS UNDER 42 U.S.C. § 300 WHEN THE APPLICANT REQUIRES PARENTAL CONSENT FOR THE PROVISION OF SERVICES TO MINORS EVEN THOUGH STATE LAW REQUIRES CONSENT FOR THOSE PARTICULAR SERVICES.

What Petitioner sought to accomplish by filing this lawsuit was to qualify for Title X funds administered by Respondent. Qualification for those funds is determined by 42 U.S.C. § 300. Therefore, this case arises under the laws of the United States. Petitioner's attempt to interject a state law question is simply artful pleading which cannot remove the case from federal jurisdiction. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n. 2, 101 S.Ct. 2424, 2427 n. 2, 69 L.Ed. 2d 103 (1981).

Petitioner's prayer in their Complaint is as follows:

> Wherefore, plaintiff prays this court to declare that the policy regarding informed consent is consistent with state law, specifically § 431.061 R.S.Mo., *and that, therefore,* the policy is not a basis upon which the Council may refuse to consider the county's application for a Title X grant; . . . [Emphasis ours.], *County of St. Charles, Missouri v. Missouri Family Health Council*, 107 F.3d 682 at 683 (8th Cir. 1997)

At page 58 of Petitioner's appendix, the letter from Respondent Missouri Family Health Council rejecting the application gives as the sole reason for rejection of the

application that the policy on informed consent violated 42 C.F.R. §§ 59.5 and 59.11 of the Title X regulations and § 8.7 of the Title X guidelines. Simply stated, the County applied for Title X funds and was turned down because their application, including the parental consent policy, was in violation of the Title X regulations. They interject the state law question claiming that they must have this policy to conform to state law. As the District Court correctly found:

> It is this Court's considered opinion that the "face of the complaint" raises a federal question. Plaintiff's application was rejected for the sole reason that plaintiff's policy did not comply with Title X regulations and guidelines. The issue of compliance with § 431.061 was raised by the plaintiff and defendant simply responded with an opinion as to its interpretation; however, compliance or non-compliance with § 431.061 was not the reason for rejecting the application. Essentially, there is no active dispute between the parties as to the interpretation and application of § 431.061. Defendant doesn't care whether plaintiff's policy complies with state law or not. It is compliance with the provisions of Title X which is the real issue in this case. Plaintiff recognizes this fact, despite its attempts to "artfully plead" around it, when it seeks a declaration that "the policy is not a basis upon which the Council may refuse to consider the County's application for a Title X grant". The Court concurs with the defendant that plaintiff's real complaint in this case is that it has been disqualified from receiving Title X grant funding because of its policy requiring parental consent. This is a federal question.

(Appendix to plaintiff's Petition, A-14, A-15.) The Court of Appeals' affirmance of the District Court was correct and its order should be sustained. The Petition should be denied.

II. THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT BECAUSE THE APPLICATION FOR TITLE X FUNDS VIOLATED THE PROVISIONS OF TITLE X BY REQUIRING PARENTAL CONSENT FOR INVASIVE PROCEDURES OR PROVISION OF PRESCRIPTION MEDICATION.

In 1970 Congress enacted Title X of the Public Health Service Act to establish a nationwide program with the express purpose of making comprehensive family planning services readily available to all persons desiring such services. Congress authorized the Department of Health, Education and Welfare to make grants and enter into contracts with public or non-profit entities to assist in the establishment of family planning projects that offer a broad range of family planning methods, including the provision of prescription and non-prescription contraceptive drugs and devices. 42 U.S.C. § 300(a).

From the very beginning teenagers were serviced by the recipients of Title X grants and in 1981 Congress amended Title X to require by statute that grantees encourage family participation in their Title X programs. The Secretary of Health and Human Services published for public comment certain modifications to the regulations which required recipients of Title X grants to notify a parent or guardian within ten working days of initially prescribing contraceptives to an unemancipated minor

and to comply with state law that required informed consent.

The proposed regulation was challenged on the basis that it was contrary to clear congressional intent that adolescents should be served; and in order to attract them to the family planning clinics, it was absolutely essential that services be provided to them without parental involvement. In 1983 the courts declared the new regulations to be beyond the scope of the secretary's power and contrary to congressional intent. *Planned Parenthood Federation of America, Inc. v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983) The District Court found and the Court of Appeals endorsed the statement that:

> Title X does not provide, or suggest, that states are permitted to determine eligibility criteria for participants in Title X programs. . . .

and further that:

> It is elementary that under the supremacy clause of the Constitution states are not permitted to establish eligibility standards for federal assistance programs that conflict with the existing federal statutory or regulatory scheme.

Id. at 663-664. The court further stated:

> Since we have concluded that, even after the 1981 amendment, the continuing policies of Title X prohibit the secretary from requiring parental notification, the states would likewise be precluded from imposing similar conditions.

Id. at 664. It was clear in 1983 and it is clear today that recipients of Title X funds cannot impose a requirement of parental consent preliminary to delivering services to

minors. *Planned Parenthood Association of Utah v. Matheson*, 582 F.Supp. 1001 (D. Utah C.D. 1983); *Doe v. Pickett*, 480 F.Supp. 1218 (D.C. S.D. WV 1979); *Planned Parenthood Association of Utah v. Schweiker*, 700 F.2d 710 (D.C. Cir. 1983).

Petitioner seems to somehow imply, although it never was pleaded, that they provide certain services with their own funds and certain services with Title X funds. Their budget attached to the complaint and found at A-37 of their Petition for Certiorari simply shows that Title X funds are applied to each budgetary category with the largest category being personnel. Under that set of facts, if a minor walks into a family planning clinic operated by Petitioner and requests services for which the county requires parental consent, that minor will be turned away by a person who receives 1/3 of their salary from the federal government through Title X. This is clearly a violation of the Title X guidelines.

At page 9 of their Petition, they again go outside the record and claim to be an organization that offers a single method of family planning under 42 C.F.R. § 59.5(a)(1). The District Court very properly rejected that argument on the basis it was outside the face of the complaint and that Petitioner had never made an application as a provider of a single method of family planning and until such an application was made and a decision made by Respondent, Petitioner could not prove any set of facts entitling it to be eligible for funding under Title X. (Petitioner's Appendix A-7.)

Petitioner also misstates the law by quoting out of context a statement from *Jane Does v. State of Utah Department of Health*, 776 F.2d 253 (10th Cir. 1985). In that case, the Utah Department of Health was enjoined from enforcing a parental consent requirement for the provision of Title X services. Their argument was that since they provided certain services with Title X funds, they could still refer potential patients to private providers when parental consent was required under state law. The District Court and the Court of Appeals made short shrift of that argument. It is an identical type of argument made by Petitioner in this case.

In summary, this case is not a proper case for granting a Writ of Certiorari, especially since there has been absolute uniformity among the circuits on the question of parental consent as applied to Title X services. *Doe v. Utah Department of Health*, 776 F.2d 253, 255-256 (10th Cir. 1985); *New York v. Heckler*, 719 F.2d 1191, 1197 (2d Cir. 1983); *Planned Parenthood Federation of America v. Heckler*, 712 F.2d 650, 665 (D.C. Cir. 1983); *Doe, supra.*

CONCLUSION

The Petition for Writ of Certiorari should be denied on the basis that clear federal question jurisdiction was present and the circuits are uniformly in agreement with the decision of the lower court in this case.

Respectfully submitted,

LORI J. LEVINE #26172
CARSON & COIL, P.C.
515 East High, P.O. Box 28
Jefferson City, MO 65102
573-636-2177

Attorneys for Respondent